

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

STATE OF MARYLAND,

*

Plaintiff,

*

v.

*

UNITED STATES OF AMERICA,
et al.,

*

Case No.: 1:18-cv-2849-ELH

Defendants.

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**PLAINTIFF’S CONDITIONAL MOTION FOR LEAVE TO FILE A SECOND
AMENDED COMPLAINT**

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, plaintiff, the State of Maryland, hereby conditionally moves for leave to file the attached Second Amended Complaint. If the Court finds that Plaintiff sufficiently alleged its claims and standing in the First Amendment Complaint, ECF 8, then the Court should deny Defendants’ motion to dismiss and dismiss this conditional motion for leave to amend as moot.

1. On November 16, 2018, Defendants filed a motion to dismiss Plaintiff’s Amended Complaint. In ordinary circumstances, Maryland would move for permission to amend its Complaint in response to the motion to dismiss, to clarify certain matters in the hopes of narrowing the issues this Court must decide. However, shortly after Defendants filed their motion, this Court issued a briefing order on the motion, noting its relevance to Plaintiff’s pending motion for a preliminary injunction, set for argument on December 19, 2018. In order to expedite the case and be responsive to the Court’s concern about the interplay between the motion to dismiss and the motion for preliminary injunction, Maryland is filing this Conditional Motion For Leave To File A Second Amended Complaint simultaneously with its opposition to the Defendants’ motion. The

proposed Second Amended Complaint sets forth the amendments Maryland would propose to make to its Amended Complaint if the Court deemed the allegations in the present Amended Complaint deficient. If, however, the Court deems the current Amended Complaint sufficient, it should deny the pending motion to dismiss as meritless and dismiss this motion for leave to amend as moot.

2. Rule 15 provides that “a party may amend its pleading [with] the court’s leave” and that “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Plaintiff moves to file the Second Amended Complaint to address certain alleged deficiencies raised in the Government’s motion to dismiss. *See* ECF 11. For the reasons set forth in the accompanying Memorandum of Law in Support of this motion, allowing Plaintiff to file the Second Amended Complaint would service justice and promote judicial efficiency. And there would be no substantial or undue prejudice, bad faith, undue delay, or futility.

3. Through the Second Amended Complaint, Plaintiff adds allegations to respond to several arguments raised in the Government’s recently filed motion to dismiss. The additional allegations clarify that, on information and belief, the Government will cease enforcing the Affordable Care Act independent of the Texas litigation; that Plaintiff will suffer immediate, direct, and concrete injuries if the Government ceases enforcing the ACA as planned; and that Plaintiff is invoking its own sovereign and proprietary interest in its *parens patriae* capacity. Moreover, Plaintiff clarifies that it is not seeking relief merely under the Declaratory Judgment Act, but is invoking this Court’s equitable jurisdiction to enjoin “violations of federal law by federal officials,” a power based on “a long history of judicial review of illegal executive action, tracing back to England.” *Armstrong v. Exception Child Ctr., Inc.*, 135 S. Ct. 1378, 1384 (2015). For these reasons, as further set forth in the accompanying Memorandum of Law in Support of this motion, Plaintiff believes the

additional allegations will relieve the court of the burden of resolving certain of the Government's arguments unnecessarily.

4. Pursuant to Local Rule 103.6(d), Plaintiff sought Defendants' consent in filing the motion for leave to amend. Defendants responded that they take no position on the motion.

For all these reasons, and those stated in the accompanying Memorandum in Support, Plaintiff respectfully requests that the Court grant Plaintiff leave to file the attached Second Amended Complaint. Also attached is a proposed order.

Dated: December 3, 2018

Respectfully submitted,

THE STATE OF MARYLAND

By: /s/ Tejinder Singh

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served on all counsel of record via the Court's CM/ECF system on this 3d day of December, 2018.

/s/ Tejinder Singh
Tejinder Singh